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7 MARIA DEL ROSARIO DELGADO, on behalf of
herself and all others similarly situated

8
9 THE UNITED STATES DISTRICT COURT
10
FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 MARIA DEL ROSARIO DELGADO, on
behalf of herself and all others similarly
12 situated

13 Plaintiffs,

14 v.

15
16 OMNI HOTELS MANAGEMENT
CORPORATION, a Delaware corporation;
17 and DOES 1 through 100, Inclusive

18 Defendants.

) CASE NO.: 2:22-cv-04200-MWF-JC

) FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION:

1. FAILURE TO PAY OVERTIME
WAGES;
 2. FAILURE TO PAY MINIMUM
WAGE;
 3. FAILURE TO PROVIDE REST
PERIODS;
 4. FAILURE TO PROVIDE MEAL
PERIODS;
 5. FAILURE TO PAY ALL WAGES
UPON TERMINATION;
 6. FAILURE TO PROVIDE
ACCURATE WAGE
STATEMENTS; and
 7. UNFAIR COMPETITION
- DEMAND FOR JURY TRIAL

25
26 COMES NOW plaintiff MARIA DEL ROSARIO DELGADO (hereinafter "Ms. Delgado")
27 and/or "Plaintiff") on behalf of herself and all others similarly situated, and alleges as follows:
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GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on behalf of Plaintiff and all other current and former similarly situated employees employed by or formerly employed by OMNI HOTELS MANAGEMENT CORPORATION (“Omni Hotels” and any subsidiaries or affiliated companies hereinafter collectively referred to as “Defendants”) within the State of California.

2. For at least four (4) years prior to the filing of this action and through to the present, Defendants have had a pattern and practice of failing to pay wages, including overtime wages, on multiple occasions to Plaintiff and other non-exempt employees in the State of California for off-the-clock work, such as submitting to required COVID-19 temperature checks prior to clocking-in and donning and doffing required work uniforms prior to and after clocking-in and out.

3. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a pattern and practice of failing on multiple occasions to provide Plaintiff and other similarly situated employees or former employees within the State of California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide compensation for such unprovided rest periods as required by California wage and hour laws.

4. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a pattern and practice of failing on multiple occasions to provide Plaintiff and other similarly situated employees or former employees within the State of California a thirty (30) minute uninterrupted meal period for days on which the employees worked more than five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods for days on which the employees worked in excess of ten (10) hours in a work day, and failing to provide compensation for such unprovided meal periods as required by California wage and hour laws.

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1 5. For at least three (3) years prior to the filing of this action and continuing through
2 the present, Defendants on multiple occasions have failed to pay Plaintiff and other similarly
3 situated employees the full amount of their wages owed to them upon termination and/or
4 resignation as required by Labor Code §§ 201 or 202.

5 6. For at least one (1) year prior to the filing of this action and continuing through the
6 present, Defendants on multiple occasions have failed to issue Plaintiff and other similarly situated
7 employees accurate itemized wage statements as required by Labor Code § 226.

8 7. Plaintiff, on behalf of herself and all other similarly situated employees, brings
9 this action pursuant to, including but not limited to, California Labor Code §§ 200, 201, 202, 203,
10 226, 226.7, 510, 512, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, §11070,
11 seeking unpaid overtime and minimum wages, failure to pay premium wages for non-compliant
12 rest and meal periods, penalties, and reasonable attorney's fees and costs.

13 8. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant
14 to California Business & Professions Code §§17200-17208 also seeks all monies owed but
15 withheld and retained by Defendants to which Plaintiff and members of the Class are entitled.

PARTIES

A. Plaintiff

17 9. Venue as to each defendant is proper in this judicial district pursuant to California
18 Code of Civil Procedure §395. Defendants operate and do business in California, and each
19 defendant is within the jurisdiction of this court for service of process purposes. The unlawful
20 acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of
21 California. Defendants employ numerous Class Members in the State of California.

22 10. Plaintiff, Ms. Delgado, is a resident of the State of California. At all relevant
23 times herein, Plaintiff has been employed by Defendants as a non-exempt employee in California.

B. Defendants

25 11. Defendant, Omni Hotels, is a Delaware corporation doing business within the
26 State of California. Omni Hotels employed Plaintiff and similarly situated non-exempt employees
27 within the State of California.

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1 12. The true names and capacities, whether individual, corporate, associate, or
2 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
3 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
4 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants
5 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
6 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
7 capacities of the defendants designated hereinafter as DOES when such identities become known.

8 13. Plaintiff is informed and believes, and based thereon alleges, that each defendant
9 acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint
10 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
11 legally attributable to the other defendants.

FACTUAL BACKGROUND

12 14. Plaintiff and other similarly situated employees have not been paid wages,
13 including overtime wages, for all time worked on multiple occasions, as a result of Defendants
14 requiring employees to work off-the-clock, such as submitting to required COVID-19 temperature
15 checks prior to clocking-in and donning and doffing required work uniforms prior to and after
16 clocking-in and out.

17 15. Defendants have had a consistent policy of failing to provide Plaintiff and other
18 similarly situated employees or former employees within the State of California rest periods of at
19 least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide
20 compensation for such unprovided rest periods as required by California wage and hour laws.

21 16. Defendants have had a pattern and practice of on multiple occasions failing to
22 provide Plaintiff and other similarly situated employees or former employees within the State of
23 California a thirty (30) minute uninterrupted meal period for days on which the employees worked
24 more than five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods
25 for days on which the employees worked in excess of ten (10) hours in a work day, and on
26 multiple occasions failing to provide compensation for such unprovided meal periods.

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1 17. Plaintiff and other similarly situated employees or former employees at all times
2 pertinent hereto were not exempt from the overtime provision of California law and the
3 implementing rules and regulations of the IWC California Wage Orders.

4 18. Defendants have failed to comply with Labor Code §226(a) by, on multiple
5 occasions, not providing itemized wage statements accurately showing, including but not limited
6 to, total hours worked during the pay period and pay due and owing for failure to pay wages as
7 described herein.

8 19. At the time Plaintiff's employment and the employment of other former employees
9 of Defendants ended, Defendants willfully failed to pay overtime wages, minimum wages, and rest
10 and meal period premiums in lieu of each unprovided rest and meal period.

CLASS ACTION ALLEGATIONS

11 20. Plaintiff brings this action on behalf of herself, and all others similarly situated,
12 as a class action pursuant to California Code of Civil Procedure §382. Plaintiff seeks to represent
13 five Classes composed of and defined as follows:

Non-Exempt Employee Class

14 All current and former employees of Defendants within the State of California at
15 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
16 until the time that notice of the class action is provided to the class (collectively
17 referred to as "Non-Exempt Employee Class").

Rest Period Class

18 All current and former employees of Defendants within the State of California at
19 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
20 until the time that notice of the class action is provided to the class, who worked
shifts of 4 hours or more (collectively referred to as "Rest Period Class").

Meal Period Class

21 All current and former employees of Defendants within the State of California at
22 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
23 until the time that notice of the class action is provided to the class, who worked
shifts of 5 hours or more (collectively referred to as "Meal Period Class").

Late Pay Class

24 All former employees of Defendants within the State of California at any time
25 commencing three (3) years preceding the filing of Plaintiff's complaint up until
26 the time that notice of the class action is provided to the class, who did not receive
27 all their wages upon termination and or resignation of their employment
(collectively referred to as "Late Pay Class").

1 **Wage Statement Class**

2 All current and former employees of Defendants within the State of California, to
3 whom, at any time commencing one (1) year preceding the filing of Plaintiff's
4 complaint up until the time that notice of the class action is provided to the class,
5 were provided with wage statements (collectively referred to as "Wage Statement
6 Class").

7 21. Plaintiff reserves the right under California Rules of Court Rule 3.765(b), to amend
8 or modify the class description with greater specificity or further division into subclasses or
9 limitation to particular issues.

10 22. This action has been brought and may properly be maintained as a class action
11 under the provisions of California Code of Civil Procedure §382 because there is a well-defined
12 community of interest in the litigation and the proposed Class is easily ascertainable.

13 A. **Numerosity**

14 23. The potential members of the Class as defined are so numerous that joinder of all
15 the members of the Class is impracticable. While the precise number of Class Members has not
16 been determined at this time, Plaintiff is informed and believes that there are over 100 Class
17 Members employed by Defendants within the State of California.

18 24. Accounting for employee turnover during the relevant periods necessarily increases
19 this number. Plaintiff alleges Defendants' employment records would provide information as to
20 the number and location of all Class Members. Joinder of all members of the proposed Class is not
21 practicable.

22 B. **Commonality**

23 25. There are questions of law and fact common to Class Members. These common
24 questions include, but are not limited to:

- 25 (1) Did Defendants violate Labor Code §1194 by not compensating Class
26 Members overtime wages?
27 (2) Did Defendants violate Labor Code §§1194 and 1197 by not paying Class
28 Members minimum wages for all hours worked?
29 (3) Did Defendants violate Labor Code §512 and applicable Wage Order by not
30 providing Class Members with meal periods?

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- 1 (4) Did Defendants violate Labor Code §226.7 by not providing Class
2 Members additional wages for missed or interrupted meal periods?
- 3 (5) Did Defendants violate Labor Code §226.7 by not providing Class
4 Members additional wages at the regular rate of pay for missed or
5 interrupted meal periods?
- 6 (6) Did Defendants violate Labor Code §226.7 by not providing Class
7 Members additional wages at the regular rate of pay for missed rest
8 periods?
- 9 (7) Did Defendants violate Labor Code §§201 and 202 by failing to pay Class
10 Members upon termination or resignation all wages earned?
- 11 (8) Are Defendants liable to Class Members for penalty wages under Labor
12 Code §203?
- 13 (9) Did Defendants violate Labor Code §226(a) by not furnishing Class
14 Members with accurate wage statements?
- 15 (10) Did Defendants violate the Unfair Competition Law, Business and
16 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
herein?
- 17 (11) Are Class Members entitled to restitution of penalty wages under Business
18 and Professions Code §17203?
- 19 (12) Are Class Members entitled to attorney's fees?
- 20 (13) Are Class Members entitled to interest?

21 **C. Typicality**

22 26. The claims of Plaintiff herein alleged are typical of those claims which could be
23 alleged by any member of the classes, and the relief sought is typical of the relief which would be
24 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
25 Classes sustained injuries and damages arising out of and caused by Defendants' common course
26 of conduct in violation of laws and regulations that have the force and effect of law and statutes as
27 alleged herein.

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D. Adequacy of Representation

3 27. Plaintiff will fairly and adequately represent and protect the interests of the
4 members of the Classes. Counsel who represents Plaintiff is competent and experienced in
5 litigating wage and hour class actions.

E. Superiority of Class Action

7 28. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
9 questions of law and fact common to the Class predominate over any questions affecting only
0 individual members of the Class. Each member of the Class has been damaged and is entitled to
1 recovery by reason of Defendants' illegal pattern and practice of on multiple occasions failing to
2 pay overtime wages, failing to pay minimum wages, failing to provide rest and meal periods or
3 compensation in lieu thereof, failing to pay all wages due upon termination and/or resignation, and
4 failing to provide accurate itemized wage statements.

29. Class action treatment will allow those similarly situated persons to litigate their
claims in the manner that is most efficient and economical for the parties and the judicial system.
Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(By Plaintiff and the Class Against All Defendants)

30. Plaintiff realleges and incorporates by reference all of the allegations contained in
the preceding paragraphs of this Complaint as though fully set forth herein.

31. At all times relevant to this complaint, California Labor Code §510 was in effect
and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight
hours in one workday and any work in excess of forty hours in any one workweek . . . shall be
compensated at the rate of no less than one and one-half times the regular rate of pay for an
employee.” Overtime pay is computed based on the regular rate of pay. The regular rate

1 of pay includes many different kinds of remuneration. Under California law, the determination of
2 regular rate of pay for purposes of determining overtime pay must include the employee's
3 commissions, bonuses, or other non-hourly compensation.

4 32. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class, on
5 multiple occasions, worked for Defendants during shifts that consisted of more than eight hours in
6 a work day and/or more than forty hours in a work week and on these multiple occasions
7 employees were not paid overtime wages as a result of Defendants requiring Plaintiff and other
8 California non-exempt employees to undergo COVID-19 temperature checks prior to the start of
9 their shifts and donning and doffing required work uniforms prior to and after clocking-in and out.

10 33. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to work in
11 excess of eight hours per day and/or forty hours per week and without properly compensating
12 overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code
13 §1194.

14 34. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt
15 Employee Class have been deprived of overtime wages in amounts to be determined at trial, and
16 are entitled to recovery of such amounts, plus interest and penalties thereon, and attorney's fees
17 and costs pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil
18 Code §3287.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

21 **(By Plaintiff and the Class Against All Defendants)**

22 35. Plaintiff realleges and incorporates by reference all of the allegations contained in
the preceding paragraphs of this Complaint as though fully set forth herein.

23 36. At all relevant times, Plaintiff and the members of the Non-Exempt Employee
24 Class were employees of Defendants covered by Labor Code §1197 and applicable Wage Orders.

25 37. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff and the
26 members of the Non-Exempt Employee Class were entitled to receive minimum wages for all
27 hours worked.

1 38. At all times herein mentioned, to the extent that Plaintiff and Non-Exempt
2 Employee Class worked for Defendants during shifts that were less than eight hours in a work day
3 and/or less than forty hours in a work week, on multiple occasions, these employees have not been
4 paid minimum wage, such that in the aggregate employees are underpaid wages as a result of
5 Defendants requiring Plaintiff and other California non-exempt employees to undergo COVID-19
6 temperature checks prior to the start of their shifts and donning and doffing required work uniforms
7 prior to and after clocking-in and out.

8 39. Defendants' failure to pay Plaintiff and members of the Non-Exempt Employee
9 Class minimum wages for all hours worked, as described herein, is in violation of Labor Code
0 §1197 and applicable Wage Orders. As a result of Defendants' pattern and practice, Plaintiff and
1 members of the Non-Exempt Employee Class have suffered damages in an amount, subject to
proof, to the extent they were not paid minimum wages for all hours worked.

40. Pursuant to Labor Code §§1194 and 1194.2, Plaintiff and members of the Non-
Exempt Employee Class are entitled to recover the full amount of unpaid minimum wages,
prejudgment interest, liquidated damages, reasonable attorney's fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(By Plaintiff and the Class Against All Defendants)

41. Plaintiff realleges and incorporates by reference all of the allegations contained in
the preceding paragraphs of this Complaint as though fully set forth herein.

42. California law and applicable Wage Orders require that employers “authorize and
43 permit” employees to take paid 10 minute rest periods in about the middle of each 4-hour work
44 period “or major fraction thereof.” Accordingly, employees who work shifts of 3 ½ to 6 hours
45 must be provided 10 minutes of paid rest period, employees who work shifts of more than 6 and up
46 to 10 hours must be provided with 20 minutes of paid rest period, and employees who work shifts
47 of more than 10 hours must be provided 30 minutes of paid rest period. Plaintiff and other
48 members of the Rest Period Class were not provided with requisite rest periods as contemplated
49 under the law.

43. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a

1 meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
2 Commission, the employer shall pay the employee one additional hour of pay at the employee's
3 regular rate of compensation for each work day that the meal period or rest period is not provided.

4 44. By their failure to provide Plaintiff and other members of the Rest Period Class
5 with the rest periods contemplated by California law, and failing to provide compensation for such
6 unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor
7 Code §226.7 and applicable Wage Orders.

8 45. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
9 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were not
10 paid additional pay owed for missed rest periods.

11 46. Plaintiff and the other members of the Rest Period Class are entitled to recover the
12 full amount of their unpaid additional pay for missed rest periods. Pursuant to Code of Civil
13 Procedure §1021.5, Plaintiff and the other members of the Rest Period Class are entitled to recover
14 reasonable attorneys' fees and costs of suit.

15 47. Pursuant to Civil Code §3287(a), Plaintiff and other members of the Rest Period
16 Class are entitled to recover prejudgment interest on the additional pay owed for missed rest
17 periods.

18 FOURTH CAUSE OF ACTION

19 FAILURE TO PROVIDE MEAL PERIODS

20 (By Plaintiff and the Class Against All Defendants)

21 48. Plaintiff realleges and incorporates by reference all of the allegations contained in
the preceding paragraphs of this Complaint as though fully set forth herein.

22 49. Pursuant to Labor Code §512, no employer shall employ an employee for a work
23 period of more than five (5) hours without a meal break of not less than thirty (30) minutes in
24 which the employee is relieved of all of his or her duties. Furthermore no employer shall employ
25 an employee for a work period of more than ten (10) hours per day without providing the employee
26 with a second meal period of not less than thirty (30) minutes in which the employee is relieved of
27 all of his or her duties. Plaintiff and other members of the Meal Period Class were on multiple
28 occasions not provided with requisite meal periods as contemplated under the law since employees

1 would be prevented and discouraged by workplace interruptions which caused missed, short and
2 late meal periods.

3 50. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a
4 meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
5 Commission, the employer shall pay the employee one additional hour of pay at the employee's
6 regular rate of compensation for each work day that the meal period or rest period is not provided.

7 51. By their failure to provide Plaintiff and members of the Meal Period Class with the
meal periods contemplated by California law, and failing to provide compensation for such
8 unprovided meal periods, as alleged above, Defendants willfully violated the provisions of Labor
9 Code §512 and applicable Wage Orders.

52. As a result of Defendants' unlawful conduct Plaintiffs and the other members of the
1 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were
2 not paid additional pay owed for missed meal periods.

53. Plaintiff and the other members of the Meal Period Class are entitled to recover the
full amount of their unpaid additional pay for missed meal periods. Pursuant to Code of Civil
Procedure §1021.5, Plaintiff and the other members of the Meal Period Class are entitled to recover
reasonable attorney's fees and costs of suit.

54. Pursuant to Civil Code §3287(a), Plaintiff and other members of the Meal Period
Class are entitled to recover prejudgment interest on the additional pay owed for missed meal
periods.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(By Plaintiff and the Class Against All Defendants)

23 55. Plaintiff realleges and incorporates by reference all of the allegations contained in
24 the preceding paragraphs of this Complaint as though fully set forth herein.

25 56. At all relevant times, Plaintiff and other members of the Late Pay Class were
26 employees of Defendants covered by Labor Code §§ 201 and 202.

27 57. Pursuant to Labor Code §§201 or 202, Plaintiff and other members of the Late Pay
28 Class were entitled upon termination to timely payment of all wages earned and unpaid prior to

1 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
2 to discharge immediately upon termination. Employees who resigned were entitled to payment of
3 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
4 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
5 unpaid at the time of resignation.

6 58. Defendants failed to pay Plaintiff and other members of the Late Pay Class all
7 wages earned and unpaid prior to termination in accordance with Labor Code §§201 or 202.
8 Plaintiff and other members of the Late Pay Class are informed and believe and thereon allege that
9 within the applicable limitations period, Defendants on multiple occasions had a pattern and
10 practice of not paying upon termination, the wages owed to them as a consequence of failing to
11 pay non-exempt employees for earned wages, as described herein.

12 59. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
13 earned prior to termination in accordance with Labor Code §§201 and 202 was wilful. Defendants
14 had the ability to pay all wages earned by Plaintiff and other members of the Late Pay Class at the
15 time of termination in accordance with Labor Code §§201 and 202, but intentionally adopted
16 policies or practices incompatible with the requirements of Labor Code §§201 and 202.

17 60. Pursuant to Labor Code §§201 and 202, Plaintiff and other members of the Late
18 Pay Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

19 61. Pursuant to Labor Code §203, Plaintiff and other members of the Late Pay Class
20 are entitled to penalty wages from the date their earned and unpaid wages were due upon
21 termination until fully paid, up to a maximum of 30 days.

22 62. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
23 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
24 paid for all wages earned prior to termination.

25 63. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
26 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
27 paid all penalty wages owed under Labor Code §203.

28 64. Pursuant to Labor Code §§218 and 218.5, Plaintiff and the other members of the
Late Pay Class are entitled to recover the full amount of their unpaid wages, penalty wages under

1 Labor Code §203, reasonable attorney's fees, and costs of suit. Pursuant to Labor Code §218.6 or
2 Civil Code §3287(a), Plaintiff and the other members of the Late Pay Class are entitled to recover
3 prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

6 **(By Plaintiff and the Class Against All Defendants)**

7 65. Plaintiff realleges and incorporates by reference all of the allegations contained in
the preceding paragraphs of this Complaint as though fully set forth herein.

9 66. At all relevant times, Plaintiff and the other members of the Wage Statement Class
10 were employees of Defendants covered by Labor Code § 226.

11 67. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
12 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages,
13 an accurate itemized statement showing gross wages earned, net wages earned, all applicable
14 hourly rates in effect during the pay period, and the corresponding number of hours worked at each
hourly rate by the employee.

15 68. Defendants failed to provide Plaintiff and the other members of the Wage
16 Statement Class accurate itemized wage statements in accordance with Labor Code § 226(a).

17 69. Plaintiff and the other members of the Wage Statement Class are informed and
18 believe and thereon allege that at all relevant times, Defendants maintained and continue to
19 maintain a policy and practice of issuing wage statements that do not show, including but not
20 limited to, all hours worked and all earned wages and pay due for all hours worked at applicable
21 rates of pay. Defendants' practices resulted and continue to result in, the issuance of Wage
22 Statements to Plaintiff and other members of the Class that do not comply with the itemization
23 requirements.

24 70. Defendants' failure to provide Plaintiff and other members of the Wage Statement
25 Class with accurate Wage Statements was knowing and intentional. Defendants had the ability to
26 provide Plaintiff and the other members of the Wage Statement Class with accurate Wage
27 Statements, but intentionally provided wage statements that Defendants knew were not accurate.

1 71. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
2 Wage Statement Class have suffered injury. The absence of accurate information on their wage
3 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery
4 and mathematical computations to determine the amount of wages owed, causes difficulty and
5 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
6 information about wages and amounts deducted from wages to state and federal government
7 agencies.

8 72. Pursuant to Labor Code § 226(e) Plaintiff and other members of the Wage
9 Statement Class are entitled to recover \$50 for the initial pay period during the period in which
10 violation of Labor Code § 226 occurred and \$100 for each violation of Labor Code § 226 in a
subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee.

73. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other members of
12 the Wage Statement Class were entitled to recover the full amount of penalties due under Labor
13 Code § 226(e) reasonable attorney's fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(By Plaintiff and Class Members Against All Defendants)

17 74. Plaintiff realleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs of this Complaint as though fully set forth herein.

19 75. The unlawful conduct of Defendants alleged herein constitutes unfair competition
20 within the meaning of Business & Professions Code § 17200. Due to their unlawful business
21 practices in violation of the Labor Code, Defendants have gained a competitive advantage over
22 other comparable companies doing business in the state of California that comply with their
23 obligations to compensate employees in accordance with the Labor Code.

24 76. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
25 similarly situated Class Members have suffered injury in fact and lost money or property. Plaintiff
26 and similarly situated Class Members have been deprived from not being compensated overtime
27 wages, from not being compensated minimum wages, from not receiving rest and meal periods or

1 compensation in lieu thereof, from receiving all earned wages upon termination, and from
2 receiving accurate wages statements.

3 77. Pursuant to Business & Professions Code § 17203, Plaintiff and similarly situated
4 Class Members are entitled to restitution of all wages and other monies owed to them under the
5 Labor Code, including interest thereon, in which they had a property interest which Defendants
6 failed to pay them but withheld and retained for themselves. Restitution of the money owed to
7 Plaintiff and similarly situated Class Members is necessary to prevent Defendants from becoming
8 unjustly enriched by their failure to comply with the Labor Code.

9 78. Plaintiff and similarly situated Class Members are entitled to recover reasonable
10 attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil
11 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

PRAYER

12 WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for
13 judgment against Defendants as follows:

- 14 A. An order certifying that Plaintiff may pursue her claims against Defendants as a
15 class action on behalf of the Class Members;
- 16 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's
17 counsel as class counsel;
- 18 C. Penalties for inaccurate wage statements under Labor Code §226(e);
- 19 D. Damages for unpaid wages under Labor Code §§201 or 202;
- 20 E. Damages for unpaid penalty wages under Labor Code §203;
- 21 F. Damages for unpaid wages for missed and/or non-compliant meal periods under
22 Labor Code §226.7;
- 23 G. Damages for unpaid wages for missed and/or non-compliant rest periods under
24 Labor Code §226.7;
- 25 H. Damages for minimum wages;
- 26 I. Damages for premium wages;
- 27 J. Liquidated damages for unpaid minimum wages;
- 28 K. Damages for unpaid overtime wages under Labor Code §1194;

- 1 L. Restitution under Business and Professions Code §17203;
- 2 M. Pre-judgment interest;
- 3 N. Costs;
- 4 O. Reasonable attorney's fees; and
- 5 P. Such other and further relief as the Court deems just and proper

6
7 DATED: September 30, 2022

THE NOURMAND LAW FIRM, APC

8
9 By: /s/ James A. De Sario
10 Michael Nourmand, Esq.
James A. De Sario, Esq.
Ivan P. Medina, Esq.
11 Attorneys for Plaintiff
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1 Carmen Aquino v. Omni Hotels Management Corporation, et al.
2 United States District Court - Central District of California Court Case number:
3 2:22-CV-04200-MWF-JC

4 I, Alejandra Beltran the undersigned, declare that I am employed in the
5 County of Los Angeles, State of California. I am over the age of 18 and not a party
6 to the within entitled action; my business address is 8822 West Olympic Boulevard,
7 Beverly Hills, California 90211.

8 On October 7, 2022, I served the following document(s) described as:

9 **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND
10 RESTITUTION**

11 Joel P. Kelly
12 JACKSON LEWIS P.C.
13 725 South Figueroa Street, Suite 2500
14 Los Angeles, California 90017

15 Melissa D. Owens
16 JACKSON LEWIS P.C.
17 225 Broadway, Suite 2000
18 San Diego, California 92101

19 The above document(s) were served on the interested parties in this action as
20 follows:

21 *All parties identified for Notice of Electronic Filing generated by the Court's
22 CM/ECF system under the above-reference case number.*

23 BY ELECTRONIC MAIL: As follows: I am readily familiar with our
24 office's practice of electronic mail transmission; on this date the document
25 enumerated above was transmitted by electronic mail transmission and that the
26 transmission was reported as complete and delivered, and without error.

27 I declare under penalty of perjury under the laws of the State of California
28 that the above is true and correct and that this Proof of Service was executed on
29 October 7, 2022, at Beverly Hills, California.

30 _____
31 /s/Alejandra Beltran
32 Alejandra Beltran